

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOULAYMANE KACHANI (A98367429)

Plaintiff,

-against-

ALBERTO GONZALES, Attorney General;
MICHAEL CHERTOFF, Secretary, Department
of Homeland Security; EMILIO GONZALEZ,
Director, United States Citizenship &
Immigration Services; ROBERT MUELLER,
Director, Federal Bureau of Investigation;
ANDREA QUARANTILLO, District Director,
New York United States Citizenship &
Immigration Services; DEPARTMENT OF
HOMELAND SECURITY, UNITED STATES
CITIZENSHIP & IMMIGRATION SERVICES,
and, FEDERAL BUREAU OF
INVESTIGATION,

Defendants.

07 Civ. 7319 (CM)

Honorable Colleen McMahon

COMPLAINT

ECF

Plaintiff Soulaymane Kachani, by his undersigned attorney, alleges as follows:

1. This is an action in the nature of mandamus and for declaratory and injunctive relief to compel final agency action that has been unlawfully withheld and unreasonably delayed for some three years on an application for adjustment of status to lawful permanent residence by an outstanding professor at Columbia University. The action arises under the Immigration & Nationality Act of 1952, as amended (the "Act"), 8 U.S.C. §§ 1101 et seq. and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq. Subject matter jurisdiction is based upon 28 U.S.C. § 1331, 28 U.S.C. § 1337, and

28 U.S.C. § 1361. This Court may grant relief pursuant to the Act, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., and 28 U.S.C. § 1361.

2. Plaintiff Soulaymane Kachani (“plaintiff” or “Professor Kachani”), a native and citizen of Morocco, resides at 601 W. 113th Street in New York New York 10025 and is Professor of Industrial Engineering and Operations Research at Columbia University.

3. Defendant Alberto Gonzales is sued in his official capacity as the Attorney General of the United States. In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, and routinely does and transacts business in the Southern District of New York.

4. Defendant Michael Chertoff is sued in his official capacity as the Secretary of the Department of Homeland Security (“DHS”). In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. §1103 and routinely does and transacts business in the Southern District of New York.

5. Defendant Emilio Gonzalez is sued in his official capacity as the Director of the United States Citizenship & Immigration Services (“USCIS”) within DHS. In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. §1103 and routinely does and transacts business in the Southern District of New York.

6. Defendant Andrea Quarantillo is sued in her official capacity as the District Director for the New York office of USCIS and has responsibility for adjudicating immigration applications referred by the Vermont Service Center (“VSC”) of USCIS.

7. Defendant Robert Mueller is sued in his official capacity as the Director of the Federal Bureau of Investigation ("FBI"). In that capacity defendant Mueller has responsibility for the conduct and completion of background checks for the adjudication of applications before USCIS and routinely does or transacts business in the Southern District of New York by taking or failing to take action that has a substantial impact upon residents of the Southern District of New York.

8. Defendants DHS, USCIS, and FBI are made party defendants for purposes of obtaining declaratory and injunctive relief pursuant to the APA and the Declaratory Judgment Act.

IMMIGRANT PREFERENCES

9. In general, the Act allocates immigrant visas based upon preferences grounded in family or employment relationships, as described in Section 203 of the Act, 8 U.S.C. §1153. Among those preferences is that in Section 203(b)(1)(A) of the Act, 8 U.S.C. §1153(b)(1)(B) for aliens who are outstanding professors or researchers. To establish eligibility for this preference, a preference petition, form I-140, must be filed with the appropriate USCIS service center. The filing of the I-140 establishes the priority date for visa allocation with respect to this preference category.

10. Plaintiff Soulaymane Kachani is the beneficiary of an approved I-140 petition as an outstanding professor filed by Columbia University and approved on April 19, 2004. A copy of the approval notice is attached as Exhibit A.

ADJUSTMENT TO PERMANENT RESIDENCE

11. In the event that the quota for the intended preference category is current, an alien may concurrently file a preference petition and an application to adjustment

status to permanent residence based on the preference under Section 245 of the Act, 8 U.S.C. §1255 and may include his or her spouse in the adjustment application as a derivative beneficiary.

12. The adjustment application is filed by the alien on form I-485. In cases of adjustment based upon an employment preference category, the adjustment application is filed with the USCIS service center for the state in which the alien resides. The applicant will be fingerprinted as part of the application process so that a background check can be done by the FBI. In 2004, the plaintiff filed his adjustment application with the VSC and the application was assigned receipt number EAC 0417153642. Upon information and belief no action was taken on this application by the VSC until Professor Kachani inquired about the status of the application with the USCIS Ombudsman, and, as result of the inquiry, the VSC transferred Professor Kachani's adjustment application to the New York District Office ("NYDO") on September 15, 2006 for an interview, even though personal interviews are usually not required in cases based upon employment preferences under the Act.

14. On November 8, 2006, the NYDO interviewed Professor Kachani on his adjustment application and the officer conducting the interview advised him that the case could not be completed because the plaintiff's alien file was with the FBI and pending FBI name checks had not been completed.

15. To date, despite repeated inquiries, no action has been taken on Professor Kachani's adjustment application after the interview and the latest information from the USCIS website, a copy of which status update is attached as Exhibit B, advises only that the case has been transferred to the NYDO for an interview. The plaintiff has satisfied all

requirements for adjustment of status to permanent residence and his case is now some two years beyond the reported processing time for such applications as shown by current processing times from the VSC, a copy of which report is attached as Exhibit C. The continuing failure of the defendants to adjudicate Professor Kachani's adjustment application is arbitrary, capricious, an abuse of discretion and contrary to law.

COUNT ONE

16. Paragraphs 1 through 15 above are repeated and realleged as though fully set forth herein.

17. The continuing failure of the defendants to adjudicate the plaintiff's adjustment application violates the Act and the APA, 5 U.S.C. § 555(b), which requires federal agencies to conclude matters with reasonable promptness. Under the APA, 5 U.S.C. § 706(1), this Court has the power to compel agency action unlawfully withheld or unreasonably delayed.

COUNT TWO

18. Paragraphs 1 through 15 above are repeated and realleged as though fully set forth herein.

19. The continuing failure of the defendants to take action required by law is subject to correction by mandamus under 28 U.S.C. § 1361.

WHEREFORE, the plaintiff Soulayman Kachani demands judgment against the defendants:

- (a) Ordering defendants to adjudicate his adjustment application forthwith, and,
- (b) Granting plaintiff costs and attorneys fees, and,

(c) Granting plaintiff such other and further relief as this Court may deem just and proper.

Dated: New York, New York
August 14, 2007

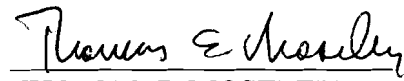

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EXHIBIT A

Case Status Search

Receipt Number: eac0417153595

Application Type: I140, IMMIGRANT PETITION FOR ALIEN WORKER

Current Status:

Approval notice sent.

On April 19, 2005, we mailed you a notice that we have approved this I140 IMMIGRANT PETITION FOR ALIEN WORKER. Please follow any instructions on the notice. If you move before you receive the notice, call customer service.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).

EXHIBIT B

Case Status Search

Receipt Number: eac0417153642

Application Type: I485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS

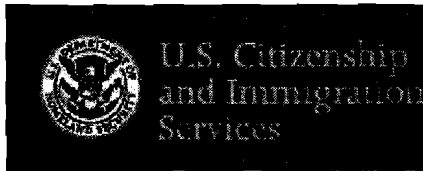
Current Status:

This case has been sent for a standard interview.

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On September 15, 2006, we transferred this case to our NEW YORK, NY location to conduct the interview that is a standard part of processing this I485 APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS. You will be sent a notice when the interview is scheduled, or if the office needs something from you. If you move while this case is pending, call customer service. We process cases in the order we receive them. You can use our processing dates to estimate when this case will be done. This case has been sent to our NEW YORK, NY location. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. Just follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).



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U.S. Citizenship and Immigration Services Vermont Service Center Service Center Processing Dates Posted July 16, 2007

Notice: U.S. Citizenship and Immigration Services (USCIS) has improved the reporting procedure for processing times of immigration benefit applications. In the past, USCIS benefit processing reports indicated the specific type of applications or petitions that were being processed and the date the cases were received. However, the date the case was received did not provide a clear indication of when USCIS expected to complete the case, nor did it provide a clear indication of USCIS' commitment to process cases within a certain cycle time. It also did not align with the processing times and cycle times the agency reports in other contexts.

This improved reporting procedure is an effort to give our customers more accurate information that better reflects current processing time and USCIS service level commitments. Effective immediately, when we are completing applications and petitions within our service level goals we will report that as the processing time. For example, when our service level goal is to process a particular kind of case within six months, and if our processing time is six months or less, we will show a date consistent with our service level goal because that reflects our commitment.

When we are not meeting our service level goal, the date posted will reflect the filing date of cases that are being completed. It should be noted that while in some instances reported processing dates may appear to have regressed due to this change, they do not reflect a lengthening of USCIS processing times, but simply the change in reporting. Our goal is to provide accurate projections and thus give customers clear expectations as to what they can expect as a processing time.

There are several important exceptions to the processing times shown below:

- Case processing will be delayed if we must ask you for more evidence or information.
If we ask for missing required initial evidence, count the processing time from when we receive that missing evidence.
- The case processing timeframe will start over if a customer doesn't appear for an interview or asks that it be rescheduled.

What if I have a problem or have questions about a case?

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if

EXHIBIT C

there are other issues, please see our fact sheet –

Case Services - How do I... know what kind of services are available to me after I file my application or petition?

One additional point about these projections. They are the time to complete processing and mail the actual notice and/or document. If you check case status online and see that your case has been approved, and you haven't yet received your approval notice or document in the mail, we ask that you wait thirty days from the approval date before contacting us. That is because it may take that long before it is returned to us as undeliverable. You can also print the case status online answer for your records.

Service Center Processing Dates for **Vermont Service Center** Posted July 16, 2007

Form	Title	Classification or Basis for Filing	Now Processing Cases with Receipt Notice Date of
I-90	Application to Replace Permanent Resident Card	Initial issuance or replacement	January 13, 2007
I-90A	Application to Replace Permanent Resident Card	Initial issuance or replacement for Special Agricultural Workers (SAW)	August 04, 2005
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94	April 12, 2007
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad	April 02, 2007
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of status in the U.S.	April 02, 2007
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S.	April 02, 2007
I-129	Petition for A Nonimmigrant Worker	H-2A - Temporary workers	June 30, 2007
I-129	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	June 15, 2007
I-129	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	L - Intracompany transfers	June 15, 2007
I-129	Petition for A Nonimmigrant Worker	Blanket L	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	O - Extraordinary ability	May 03, 2007
I-129	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	May 03, 2007
I-129	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	R - Religious occupation	May 15, 2007
I-129	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	May 03, 2007
I-129F	Petition for Alien Fiance(e)	K-1/K-2 - Not yet married - fiance and/or dependent child	January 13, 2007
I-130	Petition for Alien Relative	U.S. citizen filing for a spouse, parent, or child under 21	December 17, 2006
I-130	Petition for Alien Relative	U.S. citizen filing for an unmarried son or	July 02, 2006

		daughter over 21	
I-130	Petition for Alien Relative	U.S. citizen filing for a married son or daughter over 21	June 04, 2006
I-130	Petition for Alien Relative	U.S. citizen filing for a brother or sister	February 05, 2001
I-130	Petition for Alien Relative	Permanent resident filling for a spouse or child under 21	January 08, 2006
I-130	Petition for Alien Relative	Permanent resident filling for an unmarried son or daughter over 21	June 04, 2006
I-131	Application for Travel Document	All other applicants for advance parole	April 14, 2007
I-140	Immigrant Petition for Alien Worker	Extraordinary ability	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Outstanding professor or researcher	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Multinational executive or manager	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Schedule A Nurses	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Advanced degree or exceptional ability requesting a National Interest Waiver	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Skilled worker or professional	April 01, 2006
I-140	Immigrant Petition for Alien Worker	Unskilled worker	April 01, 2006
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	June 14, 2006
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	Violence Against Women Act (VAWA)	August 28, 2006
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	June 02, 2006
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	July 26, 2006
I-539	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	March 27, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	March 27, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	March 27, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other change of status applications	March 27, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	March 27, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	March 27, 2007
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	March 27, 2007
I-539	Application to Extend/Change Nonimmigrant Status	All other extension applications	March 27, 2007

I-612	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	September 05, 2006
I-751	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	January 03, 2007
I-765	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	April 28, 2007
I-765	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	June 16, 2007
I-765	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	April 28, 2007
I-765	Application for Employment Authorization	Based on TPS for Honduras/Nicaragua [(c)(19), (a)(12)]	April 28, 2007
I-765	Application for Employment Authorization	Based on TPS for El Salvador [(c)(19)(a)(12)]	April 28, 2007
I-765	Application for Employment Authorization	All other applications for employment authorization	April 28, 2007
I-817	Application for Family Unity Benefits	Voluntary departure under the family unity program	December 29, 2005
I-821	Application for Temporary Protected Status	El Salvador initial or late filing	July 01, 2006
I-821	Application for Temporary Protected Status	El Salvador extension	July 01, 2006
I-821	Application for Temporary Protected Status	Honduras and Nicaragua initial or late filing	July 01, 2006
I-821	Application for Temporary Protected Status	Honduras and Nicaragua extension	July 01, 2006
I-824	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	January 13, 2007
N-600	Application for Certification of Citizenship	Application for recognition of U.S. citizenship	February 08, 2007
N-643	Application for Certification of Citizenship on Behalf of an Adopted Child	Application for recognition of U.S. citizenship on behalf of an adopted child	January 13, 2007

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